

Remarks

Claims 1 through 20 stand rejected.

Claims 1, 8, and 15 have been amended to more particularly point out and distinctly claim the subject matter that Applicant regards as the invention.

Claims 1 through 20 remain in the application.

This amendment is made to place the application into condition for allowance. In the alternative, this amendment is made to place the application into better form for consideration on appeal.

Reconsideration and re-examination of the application are respectfully requested.

THE §102 REJECTIONS

Claims 1, 2, 7-9, 14-16, and 20 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 3,652,780 to Wilson. Claims 1-5, 8-12, and 15-18 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 3,801,731 to Hansen. These rejections, insofar as they may be applied to the claims as amended, are respectfully traversed.

U.S. Patent No. 3,652,780 to Wilson is directed to a reversibly mountable insulator having a U-shaped body 17 having lateral members 18, 19 and a cross member 20 connecting the outer ends of the lateral members (Wilson Col. 2, lines 15-18). Near one end of the lateral members are provided a pair of clamping grooves or jaws 22 and 23 adapted to engage the flanges of the fence post (Wilson Col. 2, lines 20-22). A cotter pin is inserted through holes 28 and 29 in the outboard position, and 44 and 45 in the inboard position (Wilson Col. 2, lines 27-43). **There are no slots whatsoever in the Wilson insulator.**

U.S. Patent No. 3,801,731 to Hansen shows a unit for attaching electric fence wire to a supporting post in which arms 16 and 18, made of a flexible material, are provided with an interlocking means 46 including a pair of slots 48, 50 and 52, 54 (Hansen Col. 3, lines 18-34). There is no slot described or

identified between the arms 16, 18, and Hansen fails to either disclose or suggest that a fence post leg is received in the space between the arms 16, 18.

By contrast, each of Applicants' amended claims positively recites structure and function that is simply not present in either the Wilson patent or the Hansen patent. Each of Applicant's amended independent claims is directed to an apparatus or method in which first and second slots receive respective cross arms of a fence post, and also including a "third slot adapted and constructed to receive a leg of the fence post the third slot being generally perpendicular to the first and second slots". Rather than using a slot, Wilson secures the insulator using a cotter pin arrangement. In Hansen, an interlocking means is used to compensate for the lack of a leg-receiving slot.

Furthermore, Applicant's claims now require that the first and second slots have "a width, length, and configuration generally conforming to a width, length, and configuration of the cross-arm to be received therein", and that the third slot has "a width, length, and configuration generally conforming to a width, length, and configuration of the leg to be received therein". This feature is clearly shown in Applicant's figures, which indicate that the slots correspond in size and shape to the respective cross-arms and legs received therein. This feature is critical in maintaining the strength, structural integrity, and stability in use of the insulator, and is simply absent from the Wilson and Hansen patents. Wilson and Hansen both rely on a pairs of opposed jaws that grasp the outside edges of the posts. Applicant respectfully disagrees with the Examiner's assertion that Hansen discloses a "passage B between bracket arms 36, 40 defining a slot". Applicant points out that the identification of the "passage" is nowhere to be found in the Hansen disclosure, and that the identification, along with the assignment of reference numeral "B", is purely the invention of the Examiner. Neither Hansen nor Wilson discloses, identifies, or defines any structure whatsoever that could reasonably be considered to be a third slot as defined by Applicant's amended claims.

It is well-established that for a claim properly to be rejected under 35 U.S.C. §102, every element of the claimed invention must be present in the cited reference. As set forth above, the Wilson and Hansen patents fail to teach every element of Applicant's claimed invention as claimed in the claims to which they are applied. Consequently, Applicant respectfully submits that the rejections under 35 U.S.C. §102(b), as they may be applied to claims 1-5, 7-12, 14-18, and 20, are improper, and should be withdrawn.

THE §103 REJECTION

Claims 6, 13, and 19 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 3,801,731 to Hansen in view of U.S. Patent No. 3,684,247 to Oltmanns. Claims 7, 14, and 20 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 3,801,731 to Hansen in view of U.S. Patent No. 2,756,958 to Binns. These rejections are respectfully traversed. Applicant respectfully submits that, for the reasons that follow, the Examiner has failed to establish a prima facie case for obviousness.

In Graham v. John Deere Co., 383 U.S. 1 (1966), the Supreme Court indicated that "under §103, the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level ordinary skill in the art resolved." 383 U.S. 1 at 17.

SCOPE AND CONTENT OF THE PRIOR ART

The scope and content of **U.S. Patent No. 3,801,731 to Hansen** is set forth above.

U.S. Patent No. 3,684,247 to Oltmanns is directed to an insulator and support for electrically conductive wire fences including a substantially strip-form flexible member sized and configured to form a portion deflectable into a wire-encircling

configuration, and another portion including means for attaching the strip-form member to a post (Oltmanns Col. 2, lines 40-45).

U.S. Patent No. 2,756,958 to Binns shows an insulator mounting clip in which portions of arms 22 adjacent to hook portions 24 may be dimpled or provided with rib-like portions 38 for increasing the rigidity of the arms adjacent their free outer ends (Binns, col. 2, lines 36-39).

DIFFERENCES BETWEEN THE PRIOR ART AND THE CLAIMS AT ISSUE

Applicant's independent claims require a first support bracket including a first slot adapted and constructed to receive a cross-arm of a fence post, a second slot adapted and constructed to receive a cross-arm of the fence post, and a third slot adapted and constructed to receive a leg of the fence post, the third slot being generally perpendicular to the first and second slots. Dependent claims specify materials and rib configuration. As set forth with reference to the 102 rejections, Hansen fails utterly to disclose, identify, or define in any way any structure whatsoever that could reasonably be considered to be a third slot as defined by Applicant's amended claims. Consequently, neither the features of the independent claims nor dependent claims can be found in Hansen, Oltmanns, Binns, or any combination thereof.

THE LEVEL OF ORDINARY SKILL IN THE ART

A person of ordinary skill in the art would never be motivated to modify the slotless insulator of Hansen with the flexible strip of Oltmanns or the outer ribs of Binns to arrive at the three-slot insulator positively recited in Applicant's claims.

Each of Applicant's claims, as amended, requires structure and function that is not present in any permissible combination of the cited references.

Applicant submits that the question under §103 is whether the totality of

the prior art would collectively suggest the claimed invention to one of ordinary skill in this art. In re Merck & Co., Inc., 231 U.S.P.Q. 375 (Fed. Cir. 1986). The answer to this question with respect to Applicant's claimed invention is clearly "no".

It is insufficient that the prior art disclosed the components of the claimed device, either separately or used in other combinations; there must be some teaching, suggestion, or incentive to make the combination made by the inventor. Interconnect Planning Corp. v. Feil, 227 U.S.P.Q. 543, 551 (Fed. Cir. 1988). Individual references cannot be "employed as a mosaic to recreate a facsimile of the claimed invention." Northern Telecom Inc. v. Datapoint Corp., 15 U.S.P.Q. 2d 1321, 1323 (Fed. Cir. 1990).

Even assuming that one of ordinary skill in the art would somehow have combined the references applied by the Examiner, the resultant combination would still lack critical features positively recited in the amended claims.


With the analysis of the deficiencies of the applied references in mind as enumerated above, there is no reason or suggestion in the evidence of record as to why one of ordinary skill in the art would have been led to produce the claimed invention. Therefore, prima facie obviousness has not been established.

The Examiner has failed to meet the test for obviousness as set forth in Graham v. John Deere Co. Withdrawal of the §103 rejection is in order, and therefore respectfully requested.

In view of the foregoing remarks and amendments, Applicant respectfully submits that all of claims 1 through 20, as amended, define allowable subject matter. The Examiner is requested to indicate the allowability of all claims in the application, and to pass the application to issue.

Respectfully submitted,
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